

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JESSICA M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 2:19-cv-01322-TLF

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of her application for supplemental security income (SSI) benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the undersigned agrees that the ALJ erred, and the ALJ's decision is reversed and remanded for further proceedings under sentence four of 42 U.S.C. § 405(g).

I. ISSUES FOR REVIEW

A. Did the ALJ properly assess the medical opinion evidence?

II. BACKGROUND

On November 27, 2015, Plaintiff filed an application for supplemental security income (SSI) benefits, alleging a disability onset date of April 7, 2013. AR 196. Plaintiff's application was denied upon initial administrative review and again upon

1 reconsideration. AR 106, 118-19. A hearing was held before Administrative Law Judge  
2 (“ALJ”) C. Howard Prinsloo on March 8, 2018. AR 30-60. On August 1, 2018, the ALJ  
3 issued a decision finding that Plaintiff was not disabled. AR 10. On June 17, 2019, the  
4 Social Security Appeals Council denied review. AR 1.

5 Plaintiff seeks judicial review of the ALJ’s decision. Dkt. 12.

### 6 III. STANDARD OF REVIEW

7 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s  
8 denial of Social Security benefits if the ALJ’s findings are based on legal error or not  
9 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874  
10 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is “such relevant evidence as a  
11 reasonable mind might accept as adequate to support a conclusion.” *Biestek v.*  
12 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

### 13 IV. DISCUSSION

14 In this case, the ALJ found that Plaintiff had the severe, medically determinable  
15 impairments of a lumbar disc bulge, a history of atrial septal defect repair, asthma,  
16 anxiety disorder, post-traumatic stress disorder, personality disorder, bipolar disorder,  
17 and polysubstance dependence. AR 15.

18 Based on the limitations stemming from these impairments, the ALJ found that  
19 Plaintiff could perform a reduced range of medium work. Relying on vocational expert  
20 (“VE”) testimony, the ALJ found that Plaintiff could not perform her past relevant work,  
21 but could perform light, unskilled jobs at step five of the sequential evaluation; therefore  
22 the ALJ determined at step five that Plaintiff was not disabled. AR 23-24.

1           A. Whether the ALJ Properly Evaluated Medical Opinion Evidence

2           Plaintiff contends that the ALJ erred in evaluating medical opinions from  
3 examining psychologist Jared R. Hellings, Psy.D., and state Disability Determination  
4 Services (DDS) consultant John Gilbert, Ph.D. Dkt. 12, pp. 4, 10.

5           The ALJ must provide “clear and convincing” reasons for rejecting the  
6 uncontradicted opinion of either a treating or examining physician. *Trevizo v. Berryhill*,  
7 871 F.3d 664, 675 (9th Cir. 2017) (quoting *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d  
8 1194, 1198 (9th Cir. 2008)). When a treating or examining physician’s opinion is  
9 contradicted, an ALJ must provide specific and legitimate reasons for rejecting it. *Id.* In  
10 either case, substantial evidence must support the ALJ’s findings. *Id.* However, the ALJ  
11 “need not discuss *all* evidence presented” to him or her. *Vincent on Behalf of Vincent v.*  
12 *Heckler*, 739 F.3d 1393, 1394-95 (9th Cir. 1984) (citation omitted) (emphasis in  
13 original). The ALJ must only explain why “significant probative evidence has been  
14 rejected.” *Id.*

15           A non-treating, non-examining source’s opinion is generally entitled to less  
16 weight than a treating or examining opinion. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th  
17 Cir. 1996). An ALJ “may reject the opinion of a non-examining physician by reference to  
18 specific evidence in the medical record.” *Sousa v. Callahan*, 143 F.3d 1240, 1244 (9th  
19 Cir. 1998).

20           1. Opinion of Dr. Hellings

21           On September 26, 2016, Dr. Hellings performed a consultative examination of  
22 Plaintiff at the request of the Social Security Administration. AR 673. He concluded that  
23 Plaintiff met the diagnostic criteria for post-traumatic stress disorder, unspecified  
24  
25

1 neurocognitive disorder, and other specified bipolar and related disorder. AR 677. He  
2 went on to state that Plaintiff's anxiety and depressed mood would necessitate  
3 significant support and direction in her daily life, and, along with her reports of significant  
4 pain, could impair her ability to focus in a functional manner; that Plaintiff's history of  
5 trauma and anxiety symptoms interfered with her social functioning; and that her ability  
6 to reason and adapt to situations was limited. AR 678. Dr. Hellings performed tests that  
7 indicated Plaintiff's immediate memory was below the first percentile and other areas of  
8 memory function were in the borderline range. AR 676. Dr. Hellings also recommended  
9 a payee because the results of the evaluation demonstrated that Plaintiff did not "have  
10 adequate capability to manage her own funds in her best interests"; yet in the medical  
11 source statement, Dr. Hellings opined that Plaintiff "does not require a payee to manage  
12 her funds." AR 677-678.

13 The ALJ gave "limited weight" to Dr. Hellings's findings, reasoning that (1) they  
14 were contradicted by Plaintiff's daily activities and her presentation; (2) the findings of  
15 memory issues were in conflict with the findings of intact processing speed and  
16 attention; (3) Dr. Hellings considered the effects of Plaintiff's pain, a physical impairment  
17 beyond the scope of his examination; and (4) Dr. Hellings's opinion on social functioning  
18 was based on subjective reports and not objective tests or personal observations. AR  
19 21.

20 The ALJ failed to give clear and convincing reasons supported by substantial  
21 evidence for discounting Dr. Hellings's opinion, and this was harmful error.

22 With respect to the ALJ's first reason, inconsistency with a claimant's daily  
23 activities may serve as a proper basis for rejecting a medical source's opinion. *Rollins v.*  
24  
25

1 *Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). Here, the ALJ focused on Dr. Hellings's  
2 statement that Plaintiff "often needs significant support and direction in her daily living"  
3 and noted that Plaintiff was able to go shopping independently, as well as appropriately  
4 dress and groom herself before the medical examination; activities the ALJ noted  
5 elsewhere in the decision included playing guitar, working out, doing woodwork,  
6 journaling, using Facebook, and raising her child, as well as losing weight through diet  
7 and exercise. AR 20, 21. However, there is no evidence cited that would indicate the  
8 level of frequency, intensity, or, indeed, success with which Plaintiff engaged in these  
9 activities; the weight loss took place over a period of almost three years. AR 20. A  
10 claimant need not "vegetate in a dark room" in order to be eligible for disability benefits.  
11 *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987) (quoting *Smith v. Califano*, 637  
12 F.2d 968, 971 (3d Cir. 1981)). Nor is there evidence that Plaintiff could dress and  
13 groom herself on an everyday basis to the same degree she did when preparing for a  
14 medical appointment.

15 As to the ALJ's second reason, inconsistent reports within an opinion may serve  
16 as a clear and convincing reason to discount the opinion of an examining source.  
17 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1995). However,  
18 the ALJ may not arbitrarily substitute his or her own judgment for a competent medical  
19 opinion. *McBrayer v. Secretary of Health and Human Services*, 712 F.2d 795, 799 (2d  
20 Cir. 1983). Here, the ALJ focused on the purported contradiction between Dr. Hellings's  
21 findings of intact processing speed and attention and serious deficits in memory. The  
22 ALJ also stated that the memory tests were inconsistent with other evidence of record  
23 showing Plaintiff's memory to be intact and opined that this suggested "either poor effort  
24  
25

1 or indicate[s] that Dr. Hellings’s findings simply do not reflect her baseline functioning.”  
2 AR 21. The ALJ makes no indication of how, if at all, the ability to pay attention and to  
3 process *new* information conflicted with an inability to *remember* information. The ALJ  
4 also does not explain how the record evidence of intact memory—namely, a 2015 self-  
5 report in which Plaintiff indicated that she had no severe memory loss—rises to the level  
6 of affirmatively contradicting Dr. Hellings’s findings on the objective tests. The ALJ  
7 offers poor effort as a possible explanation without addressing Dr. Hellings’s finding  
8 indicating no evidence of malingering. AR 675. Overall, the ALJ does not indicate how  
9 other evidence, whether inside or outside Dr. Hellings’s report, contradicts his  
10 assessment of memory deficits.

11       Regarding the ALJ’s third reason—that Dr. Hellings considered the effects of  
12 physical symptoms that were beyond the scope of his examination—Dr. Hellings’s  
13 isolated statement, regarding the probable effect of Plaintiff’s self-reported pain  
14 symptoms upon her ability to persist at tasks, did not undermine the remaining portions  
15 of the analysis that pertained to mental health conditions. AR 21, 678. “Pain merges into  
16 and becomes a part of the mental and psychological responses that produce [a  
17 claimant’s] psychological impairments.” *Lester v. Chater*, 81 F.3d 821, 829 (1995). Dr.  
18 Hellings did not attempt to evaluate the physical sources of Plaintiff’s pain symptoms,  
19 and the record does not show any reliance on pain as an independent or influential  
20 finding in Dr. Hellings’ ultimate conclusions regarding Plaintiff’s inability to work due to  
21 psychological conditions.

22       Finally, as to the ALJ’s fourth reason, regarding Plaintiff’s social functioning,  
23 “[m]ental health professionals frequently rely on the combination of their observations  
24  
25

1 and the patient's reports of symptoms," and "[t]o allow an ALJ to discredit a mental  
2 health professional's opinion solely because it is based to a significant degree on a  
3 patient's 'subjective allegations' is to allow an end-run around our rules for evaluating  
4 medical opinions for the entire category of psychological disorders." *Ferrando v.*  
5 *Commissioner of Social Security Admin.*, 449 Fed. Appx. 610 n.2 (9th Cir. 2011). In  
6 addition, the fact that Plaintiff was not irritable or belligerent towards her examining  
7 psychologist does not, contrary to the ALJ's reasoning, serve to contradict the finding  
8 that she would have difficulties in the wider range of social function that would be  
9 expected in a work environment. This was not a clear and convincing reason to discount  
10 Dr. Hellings's findings.

11 2. Opinion of Dr. Gilbert

12 On October 10, 2016, Dr. Gilbert, a state DDS consultant, reviewed Plaintiff's  
13 records to conduct a mental RFC assessment. Gilbert concluded that Plaintiff was  
14 "likely to have occasional interruptions " to her concentration, persistence or pace in a  
15 work environment due to her physical symptoms, but that with "normal breaks" she  
16 appeared able to maintain concentration, persistence and pace on a regular basis. AR  
17 96. He also noted that Plaintiff "may need [occasional] hygiene reminders," and would  
18 benefit from limiting her workplace interactions to the superficial, as well as from  
19 assistance in setting and achieving workplace goals. AR 96.

20 The ALJ gave only "some weight" to Dr. Gilbert's findings, discounting his  
21 conclusions on the basis that (1) he offered an opinion outside the scope of his  
22 expertise when he mentioned Plaintiff's physical symptoms, (2) his statement regarding  
23 occasional interruptions in concentration, persistence or pace was contradicted by his  
24  
25

1 opinion that Plaintiff could maintain these in a normal workday, and (3) his finding on  
2 Plaintiff possibly needing occasional hygiene reminders was contradicted by record  
3 evidence showing Plaintiff could care for herself and her child. AR 21. These were not  
4 reasons supported by specific evidence in the medical record. *Sousa v. Callahan*, 143  
5 F.3d 1240, 1244 (9th Cir. 1998). and the ALJ erred in relying upon them to discount Dr.  
6 Gilbert's conclusions.

7 As with the opinion of Dr. Hellings, Dr. Gilbert's opinion did not analyze Plaintiff's  
8 physical condition outside the scope of his psychological examination. Dr. Gilbert's  
9 statement discussed pain only to the extent that it could affect Plaintiff's mental  
10 functional limitations. He did not venture into an assessment of the physical source of  
11 pain or any discussion of how pain would affect Plaintiff's ability to do physical tasks.

12 With respect to the ALJ's second reason, Dr. Gilbert's purportedly contradictory  
13 statement was that Plaintiff was likely to have occasional interruptions to concentration,  
14 persistence and pace, but, when given normal breaks, appeared able to maintain  
15 concentration, persistence, and pace on a regular basis. AR 95. Here, the probative  
16 evidence from Dr. Gilbert's statement, based upon his expertise, is that the Plaintiff  
17 would have occasional interruptions to her concentration, pace and persistence. The  
18 statement that breaks would help Plaintiff to better maintain these areas of focus is not  
19 inconsistent with the finding that occasional interruptions could occur.

20 Finally, as to the ALJ's third reason, the Plaintiff's ability to present with normal  
21 hygiene at an appointment does not contradict a finding that she may need occasional  
22 reminders regarding good hygiene on a day-to-day basis. The record reviewed by Dr.  
23 Gilbert shows that Plaintiff experienced episodes of decompensation when she  
24  
25



1 reportedly would fail to attend to basic needs and “let herself go.” AR 528. Nor does the  
2 fact that Plaintiff provided an unspecified level of care for her child contradict the notion  
3 that she would have trouble caring for herself.

#### 4 REMAND FOR ADDITIONAL PROCEEDINGS

5 The Court may remand a case “either for additional evidence and findings or to  
6 award benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when  
7 the Court reverses an ALJ’s decision, “the proper course, except in rare circumstances,  
8 is to remand to the agency for additional investigation or explanation.” *Benecke v.*  
9 *Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). On remand the ALJ  
10 must re-evaluate the medical opinion evidence. *See supra* Section IV. This will  
11 potentially affect the ALJ’s determination of the RFC. Therefore, there are outstanding  
12 issues which must be resolved and remand for further proceedings is appropriate.

#### 13 CONCLUSION

14 Based on the foregoing discussion, the Court finds the ALJ erred when she  
15 determined Plaintiff to be not disabled. Defendant’s decision to deny benefits therefore  
16 is REVERSED and this matter is REMANDED for further proceedings.

17 Dated this 5th day of February, 2021.

18  
19 

20 

---

Theresa L. Fricke  
21 United States Magistrate Judge  
22  
23  
24  
25